which, in this case, can only be the Constitution. As the existence of two systems of law, operating upon the same subject-matter within one state, seems fundamentally impossible, the logical result is that the Constitution has forced a system of common law upon all the states; a doctrine which receives but little support from that instrument. *Forepaugh* v. *Del., Lack. & West. R. R.*, 128 Pa. St. 217. It does not seem necessary to go to either of these limits to support the principal case. The common law of the states, generally very similar, is sufficient to control interstate carriers. It is no more impossible for a state to forbid discrimination within its limits, although the contract contemplates an interstate carriage, than it is to control a contract made within its jurisdiction concerning the sale of land in other states. In the light of these facts, failure by Congress to legislate can only be construed as an intention to adopt existing conditions, and hence to leave interstate commerce to the care of state law. *Smith* v. *Alabama*, 124 U. S. 465. This view is possible under this last decision, and seems to avoid the dilemma which is supposed to have confronted the court.

LIABILITY FOR DAMAGES CAUSED BY UNLAWFUL ACTS. — The principle on which liability is imposed for damages resulting, as the unforeseen consequences of unlawful acts, has never been exactly defined. A recent decision suggests an important distinction between those cases where the unlawful act is morally wrong and those where it is merely in the nature of a public tort. *Osborne* v. *Van Dyke*, 85 N. W. Rep. 784 (Ia.). The defendant, while beating his horse with a pointed stick, slipped, and thereby accidentally struck the plaintiff. The court held that if the defendant was breaking a statute forbidding cruelty to animals, and the plaintiff's damage was a direct consequence of his act, he was liable even though the damage could not reasonably have been foreseen.

It is commonly admitted at the present day that the general ground for liability in tort is damage directly caused to person or property by blameworthy conduct on the part of another as regards that person or property. This principle seems to have been reached, both consciously and unconsciously, on the theory that human activity is to be encouraged, and, consequently, that loss should be allowed to rest where it falls, if the party causing it has been blameworthy towards the party damaged, only in having been active. Two exceptions to this rule, in cases of unlawful acts, apparently exist. In the first place, where a defendant is engaged in some act unlawful because of its morally wrong nature, he is made liable for any damage directly resulting from the act. Although considerable doubt has been thrown on this proposition, Terry's Leading Principles of Law, 555, yet it appears to have been followed by the few decisions in point, and to have a rational foundation. *James* v. *Campbell*, 5 C. & P. 372. The reason for not holding liable a defendant who has merely been active in causing damage, namely, that human activity is to be encouraged, entirely fails where we find that the activity was of a criminal nature. In the second place, where there is a breach of a statute forbidding or ordering an act which is not immoral, but which constitutes merely a public tort, there is liability for damages resulting, provided the injured party is of that class which the statute was designed to protect. *Gorris* v. *Scott*, L. R. 9 Ex. Div. 125; *Atkinson* v. *Newcastle Waterworks*

Co., L. R. 2 Exch. 441. This limitation seems extremely wise, whether liability in such cases is founded on the statute of Westminster, ii. c. 50, in which case it would logically follow, or, as seems more probable, is purely judge-made. It would be impolitic, and contrary to the guiding principle of torts to hold one who, without moral wrong, broke a statute, of the existence of which he may have been ignorant, liable for damages not intended to be guarded against by the statute, and perhaps not to have been foreseen as possible.

While most of the decisions accord with the principles here laid down, yet as the courts state no clear destruction between the two classes of cases, errors are likely to result. In the principal case, for example, the court supports its decision by citing cases where damage resulted from statutory torts. It is clear, however, that the statute here involved was not intended for the plaintiff's protection, and, therefore, that the plaintiff's recovery, which seems proper, must depend on the fact that the defendant was committing a morally criminal act, and could properly be held to act at his peril.

PURCHASER FOR VALUE, WITHOUT NOTICE, OF A POWER OF ATTORNEY. — The English court has recently decided that a *bona fide* purchaser for value of a power of attorney to convey property must hold such property, when conveyed, subject to equities of which he obtained notice subsequent to the purchase of the power, but prior to the actual conveyance. *London & County Banking Co.* v. *Nixon*, [1901] 2 Ch. 231. A trustee gave the plaintiff bank as security equitable mortgages on certain leaseholds, which, unknown to the bank he held in trust, and in addition a power of attorney to three of the bank's clerks to convey the titles to the leaseholds as the bank should direct. On hearing of the trust, the bank had the titles conveyed to itself. The court held that although the trustee's legal titles were thereby transferred to the bank, the latter must hold them subject to the equity. While these circumstances have not before come up for decision, the principle applicable to them seems similar to that involved where shares of stock held in trust are sold to a *bona fide* purchaser, together with a power of attorney to transfer the legal title on the company's books, or where similarly a simple chose in action is assigned by granting a power of attorney to sue. In all three cases the question is whether or not the power of attorney has conferred such legal rights that equity will not interfere. As regards the first of these cases the English court in 1865 held that, as the grantee of the power could obtain title by his own act, he took free of equities, a decision which has since been neither expressly affirmed nor overruled. *Dodds* v. *Hills*, 2 H. & M. 424. As regards the second class of cases, where choses in action have been assigned, in England the assignee has been held to take subject to equities. *Brandon* v. *Brandon*, 7 D. M. & G. 365. In America the conflict of authority is irreconcilable. *Downer* v. *South Royalton Bank*, 39 Vt. 25; *Himrod* v. *Gilman*, 147 Ill. 293. No conclusive reasons, however, have been advanced for either view.

It has been generally admitted that, while, on the one hand, equity will not enforce, as against prior equities, any equitable rights which a *bona fide* purchaser for value may acquire, yet, on the other hand, it will not deprive such a purchaser of any legal rights he may obtain. The question at issue in these cases, then, seems to depend on the exact